

## REMARKS

Applicant respectfully requests reconsideration of this application in view of the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action.

As a preliminary matter, in the Office Actions mailed December 16, 2005, September 21, 2004, and June 15, 2005, the Examiner did not attach an initialed copy of the PTO-1449 form references that were mailed to the PTO on September 4, 2004. As such, Applicant respectfully requests that the Examiner indicate that these references have been considered and made of record. The Examiner also did not indicate the references on the PTO-1449 form(s) were not in conformance with MPEP 609. As such, **Applicant respectfully requests that the Examiner indicate that these references have been considered and made of record.**

### Status of the Claims

Claims 30-65 are pending. Claim 57 is currently amended. Claims 58 and 62 are canceled. No claims are added. No new matter has been added.

### Summary of the Office Action

Claims 30-41, 44-49, and 51-65 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,371,904 to Sirimanne et al. (hereinafter "Sirimanne") in view of U.S. Patent Application No. 2004/0024304 to Foester et al. (hereinafter "Foester").

Claims 42-43 and 50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sirimanne in view of Foester and further in view of U.S. Patent No. 5,562,641 to Flomenblit et al. (hereinafter "Flomenblit").

### Response to Rejections under 35 U.S.C. § 103(a)

The Office Action rejected claims 30-41, 44-49, and 51-65 under 35 U.S.C. § 103(a) as being unpatentable Sirimanne in view of Foester. Applicant respectfully

requests withdrawal of these rejections because the combination of cited references fails to teach or suggest all of the limitations of the claims.

#### CLAIMS 30-35

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sirimanne in view of Foerster. Applicant respectfully submits that claim 30 is patentable over the combination of cited references because the combination does not teach or suggest all of the limitations of the claim. Claim 30 recites:

A method, comprising:  
depositing a fiducial into a target region of a patient;  
detecting the fiducial using electromagnetic radiation to locate the target region of the patient; and  
**performing stereotaxic radiosurgery** on the target region of the patient according to the detected fiducial and the location of the target region.  
(Emphasis added).

In support of the rejection, the Office Action states, generally:

Please note that **“stereotactic surgery” which means nothing more than tracking the internal area of interest which was already addressed.**

Office Action, December 16, 2005, p. 4 (emphasis added).

Applicant respectfully disagrees with the Examiner’s characterization of “stereotactic surgery.” Furthermore, Applicant respectfully submits that the previous Office Action does not address “stereotactic surgery.” Applicant has thoroughly reviewed the language of the previous Office Action and finds no mention of stereotactic surgery. Moreover, even if the previous Office Action were to have addressed stereotactic surgery, the present Office Action’s argument is inapposite. In particular, the present argument is inapposite because the Office Action fails to show how the prior art purportedly discloses stereotaxic radiosurgery.

None of the prior art references addresses stereotaxic radiosurgery. Moreover, none of the prior art references addresses radiosurgery, generally. Sirimanne merely discloses using a radio-opaque marker to indicate the location of a biopsy cavity. (Sirimanne, col. 2, lines 54-58.) Similarly, Foerster merely discloses that using a marker during a biopsy to monitor or diagnose a patient’s condition. (Foerster, para. 65.) However, neither Sirimanne nor Foerster discloses using their markers for radiation

treatment of a tumor or other target region. Furthermore, for the sake of argument, even if Sirimanne or Foerster were to describe using their markers in radiosurgery, neither Sirimanne nor Foerster discloses using their markers in stereotaxic radiosurgery. Therefore, Sirimanne and Foerster, either alone or in combination, do not teach or suggest performing stereotaxic radiosurgery.

In contrast, claim 30 recites “performing stereotaxic radiosurgery.” For the reasons stated above, Sirimanne and Foerster, either alone or in combination, fail to teach or suggest all of the limitations of the claim. In particular, the cited references do not teach or suggest performing stereotaxic radiosurgery. Given that the cited references fail to teach or suggest all of the limitations of the claim, Applicant respectfully submits that claim 30 is patentable over the cited references. Accordingly, Applicant requests that the rejection of claim 30 under 35 U.S.C. § 103(a) be withdrawn.

Given that claims 31-35 depend from independent claim 30, which is patentable over the cited references, Applicant respectfully submits that dependent claims 31-35 are also patentable over the cited references. Accordingly, Applicant requests that the rejection of claims 31-35 under 35 U.S.C. § 103(a) be withdrawn.

#### CLAIMS 36-45

Claim 36 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sirimanne in view of Foerster. Applicant respectfully submits that claim 36 is patentable over the combination of cited references because the combination does not teach or suggest all of the limitations of the claim. Claim 36 recites:

A fiducial apparatus, comprising:

**a body portion having a housing**, the body portion comprising a material visible using electromagnetic radiation; and

    an anchor member coupled to the body portion, the anchor member having an unanchored position and an anchored position, the **anchor member drawn into the housing in the unanchored position and withdrawn from the housing in the anchored position**.

(Emphasis added).

In support of the rejection, the Office Action states, in part:

Sirimanne et al. '904 teaches . . . **a body portion** made of a material that is visible using electromagnetic radiation, including radioopaque or echogenic (col. 2, lines 54-60); and one or more anchoring devices connected to the body portion (col. 5, lines 4-11), **each anchoring**

**device having an unanchored position and an anchored position** (col. 13, lines 54-62), the unanchored position permitting the body portion to move with the target region and the anchored position anchoring the fiducial apparatus into the target region (col. 13, lines 63-67 and col. 14, lines 1-6).

Office Action, December 16, 2005, p. 2 (emphasis added).

Applicant respectfully submits that Office Action's argument is inapposite because the Office Action fails to state that the prior art discloses all of the elements of the claim. In particular, the Office Action does not assert that the prior art discloses a body portion having a housing with an anchor member drawn into the housing in the unanchored position and withdrawn from the housing in the anchored position. Moreover, Sirimanne and Foerster, either alone or in combination, do not teach or suggest a body portion having a housing with an anchor member drawn into the housing in the unanchored position and withdrawn from the housing in the anchored position.

Applicant presented similar remarks in the response mailed September 15, 2005. However, the present Office Action does not appear to address Applicant's previous remarks. Therefore, **Applicant respectfully requests that the Examiner consider Applicant's remarks concerning independent claim 36 as they are set forth in Applicant's response mailed September 15, 2005.** In summary of those remarks, Sirimanne does not teach or suggest the body having a housing of any sort and, in particular, a housing that houses an anchor member, and Foerster does not teach or suggest the marker element having a housing for an anchor member.

In contrast, claim 36 recites "a body portion having a housing" with an "anchor member drawn into the housing in the unanchored position and withdrawn from the housing in the anchored position." For the reasons stated above, Sirimanne and Foerster, either alone or in combination, fail to teach or suggest all of the limitations of the claim. In particular, the cited references do not teach or suggest a body portion having a housing with an anchor member drawn into the housing in the unanchored position and withdrawn from the housing in the anchored position. Given that the cited references fail to teach or suggest all of the limitations of the claim, Applicant respectfully submits that claim 36 is patentable over the cited references. Accordingly, Applicant requests that the rejection of claim 36 under 35 U.S.C. § 103(a) be withdrawn.

Given that claims 37-45 depend from independent claim 36, which is patentable over the cited references, Applicant respectfully submits that dependent claims 37-45 are also patentable over the cited references. Accordingly, Applicant requests that the rejection of claims 37-45 under 35 U.S.C. § 103(a) be withdrawn.

#### CLAIMS 46-51

Claim 46 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sirimanne in view of Foerster. Applicant respectfully submits that claim 46 is patentable over the combination of cited references because the combination does not teach or suggest all of the limitations of the claim. Claim 46 recites:

A method, comprising:

inserting an insertion needle into a tissue target region of a patient, the insertion needle containing a fiducial in an unanchored position, the fiducial comprising a body portion and an anchor member coupled to the body portion, the **body portion having a housing, the anchor member drawn into the housing in the unanchored position;**

displacing a portion of the tissue target region; and

depositing the fiducial into the tissue target region, the **anchor member withdrawing from the housing** and embedding in the tissue target region in response to the fiducial exiting the insertion needle.

(Emphasis added).

In support of the rejection, the Office Action states, in part:

Sirimanne et al. '904 teaches . . . **a body portion** made of a material that is visible using electromagnetic radiation, including radioopaque or echogenic (col. 2, lines 54-60); and one or more anchoring devices connected to the body portion (col. 5, lines 4-11), **each anchoring device having an unanchored position and an anchored position** (col. 13, lines 54-62), the unanchored position permitting the body portion to move with the target region and the anchored position anchoring the fiducial apparatus into the target region (col. 13, lines 63-67 and col. 14, lines 1-6).

Office Action, December 16, 2005, p. 2 (emphasis added).

Applicant respectfully submits that Office Action's argument is inapposite because the Office Action fails to state that the prior art discloses all of the elements of the claim. In particular, the Office Action does not assert that the prior art discloses a body portion having a housing with an anchor member drawn into the housing in the unanchored position and the anchor member withdrawing from the housing in the anchored position. Moreover, Sirimanne and Foerster, either alone or in combination, do

not teach or suggest a body portion having a housing with an anchor member drawn into the housing in the unanchored position and the anchor member withdrawing from the housing in the anchored position.

Applicant presented similar remarks in the response mailed September 15, 2005. However, the present Office Action does not appear to address Applicant's previous remarks. Therefore, **Applicant respectfully requests that the Examiner consider Applicant's remarks concerning independent claim 46 as they are set forth in Applicant's response mailed September 15, 2005.** In summary of those remarks, Sirimanne does not teach or suggest the body having a housing of any sort and, in particular, a housing that houses an anchor member, and Foerster does not teach or suggest the marker element having a housing for an anchor member.

In contrast, claim 46 recites "a body portion having a housing" with an "anchor member drawn into the housing in the unanchored position" and the "anchor member withdrawing from the housing" in the anchored position. For the reasons stated above, Sirimanne and Foerster, either alone or in combination, fail to teach or suggest all of the limitations of the claim. In particular, the cited references do not teach or suggest a body portion having a housing with an anchor member drawn into the housing in the unanchored position and the anchor member withdrawing from the housing in the anchored position. Given that the cited references fail to teach or suggest all of the limitations of the claim, Applicant respectfully submits that claim 46 is patentable over the cited references. Accordingly, Applicant requests that the rejection of claim 46 under 35 U.S.C. § 103(a) be withdrawn.

Given that claims 47-51 depend from independent claim 46, which is patentable over the cited references, Applicant respectfully submits that dependent claims 47-51 are also patentable over the cited references. Accordingly, Applicant requests that the rejection of claims 47-51 under 35 U.S.C. § 103(a) be withdrawn.

#### CLAIMS 52-56

Claim 52 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sirimanne in view of Foerster. Applicant respectfully submits that claim 52 is patentable

over the combination of cited references because the combination does not teach or suggest all of the limitations of the claim. Claim 52 recites:

A fiducial apparatus, comprising:

means for coupling an anchor member to a body portion, the **body portion having a housing, the anchor member drawn into the housing in an unanchored position;**

means for displacing a portion of a tissue target region; and

means for embedding the anchor member in the tissue target region.

(Emphasis added).

In support of the rejection, the Office Action states, in part:

Sirimanne et al. '904 teaches . . . **a body portion** made of a material that is visible using electromagnetic radiation, including radioopaque or echogenic (col. 2, lines 54-60); and one or more anchoring devices connected to the body portion (col. 5, lines 4-11), **each anchoring device having an unanchored position and an anchored position** (col. 13, lines 54-62), the unanchored position permitting the body portion to move with the target region and the anchored position anchoring the fiducial apparatus into the target region (col. 13, lines 63-67 and col. 14, lines 1-6).

Office Action, December 16, 2005, p. 2 (emphasis added).

Applicant respectfully submits that Office Action's argument is inapposite because the Office Action fails to state that the prior art discloses all of the elements of the claim. In particular, the Office Action does not assert that the prior art discloses means for coupling an anchor member to a body portion, the body portion having a housing, the anchor member drawn into the housing in an unanchored position. Moreover, Sirimanne and Foerster, either alone or in combination, do not teach or suggest means for coupling an anchor member to a body portion, the body portion having a housing, the anchor member drawn into the housing in an unanchored position.

Applicant presented similar remarks in the response mailed September 15, 2005. However, the present Office Action does not appear to address Applicant's previous remarks. Therefore, **Applicant respectfully requests that the Examiner consider Applicant's remarks concerning independent claim 52 as they are set forth in Applicant's response mailed September 15, 2005.** In summary of those remarks, Sirimanne does not teach or suggest the body having a housing of any sort and, in particular, a housing that houses an anchor member, and Foerster does not teach or suggest the marker element having a housing for an anchor member.

In contrast, claim 52 recites “means for coupling an anchor member to a body portion, the body portion having a housing, the anchor member drawn into the housing in an unanchored position.” For the reasons stated above, Sirimanne and Foerster, either alone or in combination, fail to teach or suggest all of the limitations of the claim. In particular, the cited references do not teach or suggest means for coupling an anchor member to a body portion, the body portion having a housing, the anchor member drawn into the housing in an unanchored position. Given that the cited references fail to teach or suggest all of the limitations of the claim, Applicant respectfully submits that claim 52 is patentable over the cited references. Accordingly, Applicant requests that the rejection of claim 52 under 35 U.S.C. § 103(a) be withdrawn.

Given that claims 53-56 depend from independent claim 52, which is patentable over the cited references, Applicant respectfully submits that dependent claims 53-56 are also patentable over the cited references. Accordingly, Applicant requests that the rejection of claims 53-56 under 35 U.S.C. § 103(a) be withdrawn.

#### CLAIMS 57-60

Claim 57 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sirimanne in view of Foerster. Applicant respectfully submits that claim 57 is patentable over the combination of cited references because the combination does not teach or suggest all of the limitations of the claim. Claim 57, as amended, recites:

A fiducial apparatus, comprising:

an elastic body portion having an unanchored position and an anchored position, the **elastic body portion expandable to receive a material in an internal cavity** in the anchored position, the material visible using electromagnetic radiation.

(Emphasis added).

In support of the rejection, the Office Action states, in part:

Sirimanne et al. '904 teaches . . . a body portion made of a material that is visible using electromagnetic radiation, including radioopaque or echogenic (col. 2, lines 54-60); and one or more anchoring devices connected to the body portion (col. 5, lines 4-11), each anchoring device having an unanchored position and an anchored position (col. 13, lines 54-62), the unanchored position permitting the body portion to move with the target region and the anchored position anchoring the fiducial apparatus into the target region (col. 13, lines 63-67 and col. 14, lines 1-6).  
Office Action, December 16, 2005, p. 2 (emphasis added).



Applicant respectfully submits that Office Action's argument is inapposite because the Office Action fails to state that the prior art discloses all of the elements of the claim. In particular, the Office Action does not assert that the prior art discloses an elastic body portion having an unanchored position and an anchored position, the elastic body portion expandable to receive a material in an internal cavity in the anchored position. Moreover, Sirimanne and Foerster, either alone or in combination, do not teach or suggest an elastic body portion having an unanchored position and an anchored position, the elastic body portion expandable to receive a material in an internal cavity in the anchored position.

Applicant presented similar remarks in the response mailed September 15, 2005. However, the present Office Action does not appear to address Applicant's previous remarks. Therefore, **Applicant respectfully requests that the Examiner consider Applicant's remarks concerning independent claim 57 as they are set forth in Applicant's response mailed September 15, 2005.** In summary of those remarks, Sirimanne and Foerster do not teach or suggest an elastic body portion expandable to receive a material.

In contrast, claim 57 recites "an elastic body portion having an unanchored position and an anchored position, the elastic body portion expandable to receive a material in an internal cavity in the anchored position." For the reasons stated above, Sirimanne and Foerster, either alone or in combination, fail to teach or suggest all of the limitations of the claim. In particular, the cited references do not teach or suggest an elastic body portion having an unanchored position and an anchored position, the elastic body portion expandable to receive a material in an internal cavity in the anchored position. Given that the cited references fail to teach or suggest all of the limitations of the claim, Applicant respectfully submits that claim 57 is patentable over the cited references. Accordingly, Applicant requests that the rejection of claim 57 under 35 U.S.C. § 103(a) be withdrawn.

Given that claims 58-60 depend from independent claim 57, which is patentable over the cited references, Applicant respectfully submits that dependent claims 58-60 are also patentable over the cited references. Accordingly, Applicant requests that the rejection of claims 58-60 under 35 U.S.C. § 103(a) be withdrawn.

## CLAIMS 61-65

Claim 61 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sirimanne in view of Foerster. Applicant respectfully submits that claim 61 is patentable over the combination of cited references because the combination does not teach or suggest all of the limitations of the claim. Claim 61 recites:

A method, comprising:  
    inserting a fiducial in an unanchored position into a target tissue region, the fiducial comprising **an elastic body portion defining an internal cavity**;  
    displacing a portion of the tissue target region; and  
    **depositing a material into the internal cavity** of the elastic body portion to expand and anchor the elastic body portion within the tissue target region, the material visible using electromagnetic radiation.  
(Emphasis added).

In support of the rejection, the Office Action states, in part:

Sirimanne et al. '904 teaches . . . a body portion made of a material that is visible using electromagnetic radiation, including radioopaque or echogenic (col. 2, lines 54-60); and one or more anchoring devices connected to the body portion (col. 5, lines 4-11), each anchoring device having an unanchored position and an anchored position (col. 13, lines 54-62), the unanchored position permitting the body portion to move with the target region and the anchored position anchoring the fiducial apparatus into the target region (col. 13, lines 63-67 and col. 14, lines 1-6).  
Office Action, December 16, 2005, p. 2 (emphasis added).

Applicant respectfully submits that Office Action's argument is inapposite because the Office Action fails to state that the prior art discloses all of the elements of the claim. In particular, the Office Action does not assert that the prior art discloses an elastic body portion defining an internal cavity and depositing a material into the internal cavity. Moreover, Sirimanne and Foerster, either alone or in combination, do not teach or suggest an elastic body portion defining an internal cavity and depositing a material into the internal cavity.

Applicant presented similar remarks in the response mailed September 15, 2005. However, the present Office Action does not appear to address Applicant's previous remarks. Therefore, **Applicant respectfully requests that the Examiner consider Applicant's remarks concerning independent claim 61 as they are set forth in Applicant's response mailed September 15, 2005.** In summary of those remarks,

Sirimanne and Foerster do not teach or suggest an elastic body portion expandable to receive a material.

In contrast, claim 61 recites “an elastic body portion defining an internal cavity” and “depositing a material into the internal cavity.” For the reasons stated above, Sirimanne and Foerster, either alone or in combination, fail to teach or suggest all of the limitations of the claim. In particular, the cited references do not teach or suggest an elastic body portion defining an internal cavity and depositing a material into the internal cavity. Given that the cited references fail to teach or suggest all of the limitations of the claim, Applicant respectfully submits that claim 61 is patentable over the cited references. Accordingly, Applicant requests that the rejection of claim 61 under 35 U.S.C. § 103(a) be withdrawn.

Given that claims 62-65 depend from independent claim 61, which is patentable over the cited references, Applicant respectfully submits that dependent claims 62-65 are also patentable over the cited references. Accordingly, Applicant requests that the rejection of claims 62-65 under 35 U.S.C. § 103(a) be withdrawn.

### CONCLUSION

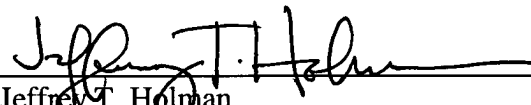
It is respectfully submitted that in view of the amendments and remarks set forth herein, the rejections have been overcome. If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Jeffrey Holman at (408) 720-8300.

If there are any additional charges, please charge them to Deposit Account No. 02-2666.

Respectfully submitted,

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